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Hon. Ann L. Aiken

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

**CASCADIA WILDLANDS, THE CENTER  
FOR BIOLOGICAL DIVERSITY, and  
AUDUBON SOCIETY OF PORTLAND,**

Plaintiffs,

v.

**SCOTT TIMBER CO., ROSEBURG  
RESOURCES CO., and RLC INDUSTRIES  
CO.,**

Defendants.

Case No. 6:16-CV-01710-AA

**NOTICE REGARDING CLARIFICATION  
TO PRETRIAL ORDER**

**NOTICE**

Pursuant to the parties' stipulation, the Pretrial Order in this case states that "Defendants intend to implement the Benson Snake logging operation unless the Court determines it violates Section 9 of the ESA and Plaintiffs are entitled to an injunction prohibiting the operation under applicable law." Dkt. No. 120 at ¶ 61. That statement was true when the stipulation was made and through trial in this case, held May 6-10, 2019. However, based on recent events, Defendants

believe it is necessary and appropriate for them to advise the Court and the parties of a change in circumstances bearing on this statement in the Pretrial Order.

On July 18, 2019, Scott Timber Co. (“STC”) and Roseburg Resources Company (“RRC”) executed an option to purchase agreement (“Option Agreement”) with a third party (“Third Party”). In the Option Agreement, the Third Party purchased the option to buy nine (9) different tracts of timberland owned by STC and RRC, including the Benson Ridge Tract owned by STC and which is the subject of this litigation. The Third Party is seeking to acquire the nine tracts for non-timber production purposes. As such, the Option Agreement contractually obligates STC and RRC to “not harvest timber” from the subject properties, including the Benson Tract, during the first one-year option term. That means, from July 18, 2019 to July 17, 2020, STC and RRC are contractually prohibited from harvesting timber from the Benson Ridge Tract. The Option Agreement further provides the Third Party the right to purchase a second one-year option term, in which case STC and RRC would be contractually prohibited from harvesting timber from the Benson Ridge Tract until July 17, 2021. If, at any time during an option term period, the Third Party exercises the option to purchase, then the Third Party will be obligated to purchase the nine tracts, including the Benson Ridge Tract, and STC and RRC will relinquish any title or interest in the properties.

Defendants wish to advise the Court that if the Third Party never exercises the option to purchase and the Option Agreement expires, then Defendants would still intend to execute the 49-acre Benson Snake logging operation unless the Court rules that it violates Section 9 of the ESA and issues an injunction prohibiting the project. Nevertheless, due to the fact that, currently, Defendants are contractually prohibited from implementing the Benson Snake logging operation

until, at the earliest, the winter of 2020-2021, Defendants deemed it necessary and advisable to inform the Court and the parties of this change in circumstances.

Defendants wish to advise the Court that its decision to execute the Option Agreement was not related to this litigation. Defendants were presented with a business opportunity to sell nine select tracts of property for which the Third Party has a particularized interest. Accordingly, Defendants' decision to sell the nine tracts was informed by economic and related business considerations, not this litigation.

Finally, due to the sensitivity of the nature and terms of this transaction for the Third Party and Defendants (and additional considerations), Defendants wish to keep the Option Agreement and the identity of the Third Party confidential. Should the Court wish to view the Option Agreement, Defendants request that they be allowed to file the document under seal or, alternatively, the opportunity to request an order allowing it to be filed under seal.

**DATED** this 26th day of August, 2019.

**YOCKIM CAROLLO LLP**

s/ Dominic M. Carollo

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Attorneys for Defendants Scott Timber Co.,

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## **CERTIFICATE OF SERVICE**

I hereby certify that on August 26, 2019, I served the foregoing **NOTICE REGARDING CLARIFICATION TO PRETRIAL ORDER**, through the Court's Electronic Case Filing system on:

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